

- (3) Uniformity of symbols;
 - (4) Drawing title; and
 - (5) Revision number and date;
4. A requirement for a safety review of existing equipment which shall meet the requirements of N.J.A.C. 7:31-4.7(b). In addition, the safety review shall include at a minimum the following:
- i. Annotation or preparation of process flow diagrams, piping and instrument diagrams, electrical one-line diagrams, electrical classification drawings, site plan, sewer system piping diagrams, and fire water system piping diagrams incorporating drawing title, revision number, date, signature, etc., as necessary to reflect actual conditions. The annotation of the piping and instrument diagrams shall be limited to EHS equipment, run and size of piping, location and function of instruments and location, function and size of valves;
 - ii. Completion or creation of the standard operating procedures necessary to comply with the requirements of 40 CFR 68.69 with changes specified at N.J.A.C. 7:31-4.1(c)8 and 4.3;
 - iii. A site plan review to determine at a minimum the following:
 - (1) Conformance of location of the EHS equipment with the criteria for design and operation relative to parameters of flammability, reactivity and toxicity;
 - (2) Accessibility for operations, maintenance and emergency response including corridors, roadways and walkways; and
 - (3) The measures and precautions designed for the purpose of protecting the covered process from external forces and events and for the purpose of controlling EHS releases within the stationary source;
 - iv. An electrical classification review to determine conformance with the most current edition of the National Electrical Code, ANSI/NFPA 70;
 - v. A review of fire water and sewer system drawings to determine if these systems as built conform with current design practices;
 - vi. A mechanical design review comparing the specifications of installed EHS equipment and instrumentation with criteria for design and operation including, but not limited to:
 - (1) Pressure and temperature ratings;
 - (2) Materials of construction;
 - (3) Corrosion allowance;
 - (4) Safety relief devices and interlocks;
 - (5) Leak tightness and pressure testing; and
 - (6) Potential points of EHS releases due to failure of EHS equipment, such as, seal systems, packings, sight glasses, expansion joints and rotameters;
 - vii. A review and detailed analysis of any EHS accidents that occurred in the past six years for the purpose of identifying problem areas;
 - viii. A determination of the nature and age of EHS equipment and an examination of their physical integrity by visual inspection for evidence of deterioration or distortion by processes such as corrosion, erosion, vibration and fluid leaks; and
 - ix. An examination of the EHS equipment for evidence of inadequate equipment and piping supports;
5. A requirement for a process hazard analysis with risk assessment meeting the requirements of N.J.A.C. 7:31-4.2 on EHS equipment or operating alternatives using the method of analysis specified in the work plan by the Department;
6. A requirement for a review of the owner or operator's preventive maintenance program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator's staff, and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-4.5;
7. A requirement for review of the owner or operator's operator training program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff, and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-4.4;
8. A requirement for review of the owner or operator's EHS accident investigation procedures by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator's staff and identification of those activities necessary to achieve compliance with 40 CFR 68.81 with changes specified at N.J.A.C. 7:31-4.1(c)15 through 21;
9. A requirement for review of the owner or operator's emergency response program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator's staff and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-5;
10. A requirement for review of the owner or operator's audit program; and
11. A requirement for preparation and submittal of progress reports to the Department detailing the status of implementation of the scope of work at intervals to be established by the Department and included in the work plan.
- (b) The scope of work for the work plan for each owner or operator required to have an EHSARA performed by a

consultant or the Department for a Program 2 covered process shall include the following:

1. A general description of how the owner or operator of a covered process uses EHSs at the stationary source;
2. A requirement for the verification of the quantities and methods of handling all EHSs at the stationary source against the registration submitted by the owner or operator of a covered process;
3. A requirement for the following reviews and, where necessary, the completion or creation of the documents necessary to perform the reviews:
 - i. A review of process description and process chemistry to define all the possible chemical reactions at the stationary source that may cause or contribute to an EHS accident;
 - ii. A review or creation of the codes and standards used to design, build and operate the process;
 - iii. A review of the simplified EHS process flow diagrams and piping and instrument diagrams including those of process, utility or service units at the stationary source that are interactive with the EHS piping and instrument diagrams;
 - (1) Completeness as defined in N.J.A.C. 7:31-1.5 for each document referred to in (a)3iii above;
 - (2) Legibility;
 - (3) Uniformity of symbols;
 - (4) Drawing title; and
 - (5) Revision number and date;
 - iv. A review of safety information related to the EHSs, processes, and equipment as specified at 40 CFR 68.48 with changes specified at N.J.A.C. 7:31-3.1(c)1 and 2; and
 - v. A review of standard operating procedures as required by 40 CFR 68.52 with changes specified at N.J.A.C. 7:31-3.1(c)3;
4. A requirement for a hazard review in accordance with 40 CFR 68.50.
5. A requirement for a review of the owner or operator's preventive maintenance program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff, and identification of those activities necessary to achieve compliance with 40 CFR 68.56;
6. A requirement for review of the owner or operator's operator training program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff, and identification of those activities necessary to achieve compliance with 40 CFR 68.54 with changes specified at N.J.A.C. 7:31-3.1(c)4;

7. A requirement for review of the owner or operator's EHS accident investigation procedures by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff and identification of those activities necessary to achieve compliance with 40 CFR 68.60 with changes specified at N.J.A.C. 7:31-3.1(c)7 and 8;

8. A requirement for review of the owner or operator's emergency response program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff and identification of those activities necessary to achieve compliance with N.J.A.C. 7:31-5;

9. A requirement for review of the owner or operator's audit program by inspection of internal documents, correspondence and standard forms and by interviews with the owner or operator of a covered process's staff and identification of those activities necessary to achieve compliance with 40 CFR 68.58 with changes specified at N.J.A.C. 7:31-3.1(c)5 and 6; and

10. A requirement for preparation and submittal of progress reports to the Department detailing the status of implementation of the scope of work at intervals to be established by the Department and included in the work plan.

7:31-9.3 Selection of consultants

(a) The Department shall authorize an independent consultant nominated by the owner or operator to perform the Extraordinarily Hazardous Substance Accident Risk Assessment. The independent consultant shall be chosen by the Department and hired and paid for by the owner or operator in accordance with the provisions of this subchapter.

(b) Within 60 days after receipt of the finished work plan, an owner or operator shall submit the names and proposals of three consultants who meet the requirements at N.J.A.C. 7:31-9.4(b) and are willing and able to perform the EH-SARA in accordance with the schedule set in the work plan.

(c) The owner or operator shall not submit the name and proposal of any consultant who:

1. Is owned or controlled by the owner or operator or by a firm which owns or controls both the owner or operator and the consultant or owns or controls the owner or operator;
2. Was the designer of any covered process at the stationary source;
3. Is debarred or suspended pursuant to N.J.A.C. 7:1-5 or on the New Jersey Department of Treasury's list of firms debarred or suspended from engaging in work in the State;

4. Fails to state in its written proposal that it will not subcontract any of the work involved in the EHSARA unless provided in writing by the Department; or

5. Fails to state in its written proposal that it will not change the staff named to do any of the work involved in the EHSARA unless approved in writing by the Department.

7:31-9.4 Proposal requirements

(a) Each proposal shall explain in a clear and concise manner how the consultant is going to address each task in the owner or operator's work plan.

(b) Each proposal shall demonstrate the consultant's ability to perform the EHSARA set forth in this subchapter and shall include:

1. The consultant's qualifications in:
 - i. Process engineering;
 - ii. Safety engineering;
 - iii. Preparation of operating procedures;
 - iv. Preparation or review of maintenance procedures;
 - v. Preparation or review of safety procedures;
 - vi. Preparation or review of operator training programs;
 - vii. Performance or review of accident investigations;
 - viii. Performance of hazard reviews and process hazard analyses;
 - ix. Performance of risk assessments;
 - x. Preparation or review of emergency response plans;
 - xi. Performance of audits of risk management programs;
 - xii. Knowledge of risk reduction methods; and
 - xiii. With respect to each of the above qualifications, the following:
 - (1) The name of consultant's client; if the client's name cannot be divulged, then a description of the client;
 - (2) The name of client's contact person, if available;
 - (3) The date and duration of work;
 - (4) The names of consultant's employees who performed the work;
 - (5) The schedule of the work; and
 - (6) A brief description of the work.

2. The qualifications and experience of additional staff who may be assigned on an as needed basis; and

3. The level of effort to be dedicated and schedule for performing each workplan task item including:

- i. The names of staff assigned;
- ii. The expected starting and completion dates;
- iii. The estimated personhours; and
- iv. The scope and extent of usage of collateral items such as computer use, outside consultants, etc.

(c) The resumes of the consultant or the consultant's staff who are to be committed to the work plan agreed to by the owner or operator of a covered process and the Department shall be included in the proposal submitted to the Department and shall demonstrate that the consultant or the consultant's staff implementing the workplan has the following qualifications, at a minimum:

1. At least one previous project in each of the 12 areas of experience listed in (b)1 above;
2. Key staff members each having at least five years of professional experience and one key staff member who is a licensed professional engineer;
3. A task force leader with at least 36 months of accumulated experience as a project manager of multidisciplinary technical teams;
4. A technical leader of the hazard analysis and risk assessment portions of the work who has at least 12 months aggregate experience at such work; and
5. Any assisting staff shall have at least three years of professional work experience and at least six months accumulated experience on the type of work involved in the portion of the EHSARA to which they will contribute.

(d) The Department, within 15 days after receipt of the names and proposals from the owner or operator, shall:

1. Select one of the consultants to perform the EHSARA; or
2. Within 60 days after determining that none of the consultants' proposals submitted by the owner or operator meet the requirements in N.J.A.C. 7:31-9.4, direct the owner or operator to submit the names and proposals of an additional three consultants to the Department for its selection of one of the consultants to perform the EHSARA.

(e) The owner or operator of a covered process shall execute a contract with the consultant chosen by the Department within 45 days after receipt of the name of the consultant from the Department.

(f) The consultant or Department shall perform the EHSARA and develop a recommended risk reduction plan

which will include the identification of those activities necessary to create a risk management program. These shall be performed in conformity with the work plan developed and explained at the meeting held pursuant to N.J.A.C. 7:31-9.1(d). Members of the owner or operator's staff may participate in the work preparatory to the EHSARA.

7:31-9.5 EHSARA report

(a) Upon completion of the EHSARA, the consultant or the Department shall prepare an EHSARA report which shall include recommendations to reduce risks.

(b) The original EHSARA report shall be submitted to the Department and a copy of the EHSARA report shall be submitted to the owner or operator at the same time.

(c) The EHSARA report shall contain, but not be limited to, the following for Program 3 covered processes:

1. The findings of the verification required by N.J.A.C. 7:31-9.2(a)2;

2. The findings of the review required by N.J.A.C. 7:31-9.2(a)3;

3. The findings of the safety review required by N.J.A.C. 7:31-9.2(a)4;

4. The reports of the process hazard analysis with risk assessment required by N.J.A.C. 7:31-9.2(a)5;

5. The findings of the reviews required by N.J.A.C. 7:31-9.2(a)6 through 10; and

6. The recommended risk reduction plan including the listing of all of the deficiencies identified in (c)1 through 5 above, the remedial actions and alternatives to correct the deficiencies and a proposed schedule for implementation.

(d) The EHSARA report shall contain, but not be limited to, the following for Program 2 covered processes:

1. The findings of the verification required by N.J.A.C. 7:31-9.2(b)2;

2. The findings of the review required by N.J.A.C. 7:31-9.2(b)3;

3. The reports of the process hazard analysis with risk assessment required by N.J.A.C. 7:31-9.2(b)4;

4. The findings of the reviews required by N.J.A.C. 7:31-9.2(b)5 through 9; and

5. The recommended risk reduction plan including the listing of all of the deficiencies identified in (c)1 through 4 above, the remedial actions and alternatives to correct the deficiencies and a proposed schedule for implementation.

(e) The Department shall review the EHSARA report and prepare a risk reduction plan which will be incorporated into an administrative order which will be issued to the owner or operator. The administrative order shall direct the owner or operator to implement the risk reduction plan which shall include:

1. A list of risks that must be reduced;

2. The actions the owner or operator is to take to reduce the risks including those necessary to complete a risk management program meeting the requirements of N.J.A.C. 7:31-3 for Program 2 covered processes or N.J.A.C. 7:31-4 for Program 3 covered processes and the schedule within which the owner or operator shall complete the actions; and

3. A statement that the owner or operator has an established risk management program.

(f) Any owner or operator aggrieved by the administrative order issued pursuant to (k) above may request an adjudicatory hearing by following the procedures set forth at N.J.A.C. 7:31-11.3.

(g) Upon implementation of the risk reduction plan as required by the administrative order, the established risk management program will be audited in accordance with 40 CFR 68.220 with changes specified at N.J.A.C. 7:31-8.1(c)2 through 12 and 8.2.

(h) The Department may by regulation or on a case-by-case basis limit the scope or detail of the work plan where it determines that the action does not remove or compromise the protection required for the public interest.

SUBCHAPTER 10. CONFIDENTIALITY AND TRADE SECRETS

7:31-10.1 Scope and applicability

(a) This subchapter constitutes the rules for the assertion, substantiation, review, and appeal of confidentiality claims and petitions to withhold privileged trade secret or security information, and establishes the principles, guidelines and procedures governing the internal management and disclosure of confidential information provided to the Department pursuant to this chapter.

(b) All owners or operators asserting a confidentiality claim or a petition to withhold privileged trade secret or security information shall follow the procedures set forth in this subchapter.

(j) Any document prepared by the Department for the registrant which contains confidential information shall display the word "CONFIDENTIAL" in bold type or stamp on the top of each page. The envelope containing this document shall be addressed to the registrant's responsible manager and shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in a plain envelope addressed for mailing.

(k) No persons other than the Commissioner and his or her designated employees or designated agents or an administrative law judge conducting a hearing on the confidentiality of information pursuant to N.J.S.A. 52:14F-1 et seq., shall have access to confidential information and such access shall be on a need-to-know basis only. Said designated representatives of the Commissioner shall be employees or agents of the Department and such designations shall be made in writing.

(l) The Commissioner shall designate employees to act as records custodians of all confidential information gathered pursuant to the Act or this chapter. These designated employees shall be responsible for acknowledging and recording the receipt of confidential information from an owner or operator, for tracking and recording all confidential information given to Department-designated employees or agents or an administrative law judge, for maintaining and upkeeping the confidential information file and storage area and for establishing any other methods deemed appropriate to protect the confidentiality of information through internal procedures or guidelines.

(m) Any confidential information added to a computerized data base shall only be added to computers which are:

1. Capable of being locked during periods of non-use by means of a lock and key mechanism, or by the use of passwords or levels of security clearances, or by other means that restrict access only to authorized Department personnel;
2. Are not tied to another computer system by means of a communications network; and
3. Are kept within an office capable of being locked when not being used by an authorized person.

(n) Any confidential information submitted to the Department which becomes obsolete or is no longer needed by the Department for the implementation of the Act or this chapter shall be returned to the owner or operator.

Amended by R.1998 d.355, effective July 20, 1998.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

In (a), (d) and (e), changed N.J.A.C. references; in (i), substituted "owner or operator's qualified person" for "registrant's responsible manager" at the end; and in (l) and (n), substituted references to owners and operators for references to registrants.

7:31-10.9 Disclosure of confidential information

(a) The Department may disclose confidential information to a person other than a Department employee, agent or administrative law judge only as provided in this section.

(b) The Department may disclose confidential information to any other governmental agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;
2. The request sets forth the official purpose for which the information is needed;
3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;
4. The other governmental agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;
5. The other agency agrees not to disclose the information further unless:
 - i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or
 - ii. The other agency has obtained the consent of the affected registrant to the proposed disclosure; and
6. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) The Department may disclose confidential information to an agent of the Department and to an agent's employees when the agent is assisting in implementing the Act, its activities necessitate such access, and the requirements of (c)1 below have been satisfied. Any such disclosure of confidential information shall be restricted to a person approved in writing by the Department.

1. An agent shall not receive any confidential information unless:
 - i. It has submitted a plan to the Department which describes measures for adequately protecting confidential information from unauthorized disclosure, and such plan has been approved by the Department;
 - ii. It has provided written documentation demonstrating, to the satisfaction of the Department, that it maintains professional liability insurance and comprehensive general liability insurance in amounts to be set by the Department; and

iii. In addition to the requirement of (c)2 below, it has signed an agreement developed by the Department, protecting confidential information from unauthorized disclosure. The agreement shall include a provision whereby the agent assumes liability for any damages to the registrant resulting from the intentional or negligent release of confidential information by the agent and its employees.

2. Any person granted access to confidential information pursuant to this section shall sign an agreement developed by the Department protecting the confidentiality of the information prior to receipt of the information.

3. Any person who receives confidential information pursuant to this section shall take appropriate measures to protect the information from unauthorized disclosure which shall include, but not be limited to:

- i. Keeping the information confidential from unauthorized persons;
- ii. Keeping any records containing confidential information in a locked file cabinet or safe, when not in use;
- iii. Using the information only for the use approved by the Department;
- iv. Not reproducing the confidential information; and
- v. Returning all material on which the confidential information has been recorded to the Department within 30 days after finishing using the information.

(d) Except as otherwise provided in (e) below, the Department shall notify in writing the owner or operator who supplied the confidential information of:

1. Its disclosure to another agency or agent of the Department;
2. The date on which disclosure was made;
3. The name of the agency or agent to which disclosed; and
4. A description of the information disclosed.

(e) The Department may disclose any confidential information to any other person if it has obtained the written consent of the owner or operator's qualified person to such disclosure.

1. The giving of consent by an owner or operator to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

(f) The Department may use confidential information in a civil or criminal proceeding, if permitted by a court.

Amended by R.1998 d.355, effective July 20, 1998.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

In (d) and (e), substituted references to owners and operators for references to registrants; and in (e), substituted "owner or operator's qualified person" for "registrant's responsible manager" in the introductory paragraph.

7:31-10.10 Wrongful access or disclosure

(a) A person shall not disclose, seek access to, obtain or have possession of any confidential information obtained pursuant to the Act or this chapter, except as authorized by this subchapter.

(b) Every Department employee or agent who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee or agent shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and
2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Disclosure by an agent in violation of this subchapter or the contractual provisions described in N.J.A.C. 7:31-10.9(c) shall constitute grounds for debarment or suspension as provided in "Debarment, Suspension and Disqualification from Department Contracting," N.J.A.C. 7:1-5, in addition to whatever other remedies may be available to the Department at equity or law.

(g) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

Amended by R.1998 d.355, effective July 20, 1998.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).
In (f), changed N.J.A.C. reference.

7:31-10.11 Use of confidential information in rulemaking, reviewing extraordinarily hazardous substance accident risk assessment reports and risk management programs, and enforcement proceedings

Notwithstanding any other provisions of this subchapter, the Department may use confidential information in the development of the TCPA program rules, in the review and preparation of documents approving or withholding approval of extraordinarily hazardous substance accident risk assessment reports and risk management programs, and in the preparation of enforcement documents and during enforcement proceedings.